**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929**

**MFA.No. 815 of 1999(A)**
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**OPMV.1182/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM**
**.....**

**APPELLANT - PETITIONER:**
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**SREEKUMAR, S/O. B.S.NAMPOOTHIRI,**
**MOOLEMADAM, PERUNNA P.O.,**
**CHANGANACHERRY.**

**BY ADV. SRI.P.K.RAVISANKAR**

**RESPONDENTS - RESPONDENTS:**
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1. **N.. JAGADEESH CHANDRAN, S/O.NARAYANAN,**
   **CHIRAMATIL HOUSE, NORTH OF BISHOP**
   **PALACE, CHANGANACHERRY.**

2. **THOMAS ANTONY S/O. ANTONY,**
   **CHAKKUPPURAKKAL HOUSE, NEAR THURUTHEL**
   **JUNCTION, MUTAR KARA, MUTTAR VILLAGE.**

3. **THE NATIONAL INSURANCE CO. LTD., REPRESENTED**
   **BY ITS DIVISIONAL MANAGER, KOTTAYAM.**

**BY ADV. SRI.E.M.JOSEPH**
**SRI.P.RAVINDRA BABU**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ALONG WITH MFA NO. 291 OF 2000 ON 4.6.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# K. PADMANABHAN NAIR, J.

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**M.F.A. NO. 815 OF 1999**
**AND**
**M.F.A. NO. 291 OF 2000**

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**Dated this the 4th day of June, 2007**

**J U D G M E N T**

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**Miscellaneous First Appeal No. 815 of 1999 is filed by the petitioner in O.P.(MV) No.1182 of 1994 on the file of the Motor Accidents Claims Tribunal, Kottayam contending that the compensation awarded in the case was inadequate. Miscellaneous First Appeal No.291 of 2000 is filed by the insurer contending that the insurer has no liability to indemnify the insured. The parties will be referred to as arrayed in the O.P.**

**2. Petitioner was a passenger in an Autorikshaw bearing Reg. No.KL5/1092. According to the petitioner he hired the Autorikshaw from Changanasserry town. It was averred that due to the rash or negligent driving of the vehicle, the vehicle went off the road, capsized and petitioner sustained injuries. Petitioner was taken to the Medical College Hospital. Petitioner filed the O.P. claiming a compensation of**

**Rs.1,00,000/-.**

**3. Third respondent, insurer, alone contested the matter. It was contended that the second respondent driver had no valid driving licence to drive a vehicle and first respondent allowed the second respondent to drive the vehicle without a valid licence and hence there is violation of policy conditions. It was contended that the compensation claimed was exorbitant and even if it is found that the insurer is liable, its liability is limited to the extent of Rs.15,000/-.**

**4. The Tribunal, after considering the evidence on record, found that the accident occurred due to the negligence of the second respondent, driver of the Autorikshaw. The Tribunal further found that the petitioner is entitled to get an amount of Rs.58,500/- as compensation. The contention of the third respondent that it was not liable to indemnify the insured was rejected. The Tribunal directed the third respondent to deposit the amount awarded.**

**5. Petitioner filed the appeal contending that the compensation awarded by the Tribunal is highly inadequate The third respondent filed the appeal challenging the finding that it is liable to pay the compensation awarded.**

**6. I have carefully gone through the evidence adduced in the case. Evidence on record shows that the accident occurred due to the rash or negligent driving of the Autorikshaw by the second respondent. So, I do not find any reason to interfere with that finding.**

**7. Now I shall consider whether the compensation awarded by the Tribunal is adequate or not. Petitioner claimed Rs.8,000/- towards compensation for loss of earning for 4 months. That was allowed by the Tribunal. He claimed a sum of Rs.2,500/- towards compensation for transportation to hospital. The Tribunal awarded a sum of Rs.1,000/- under that count though the petitioner did not produce any documentary evidence. Petitioner claimed Rs.5,000/- towards compensation for extra nourishment and the Tribunal awarded a sum of Rs.2,000/-. He also claimed Rs.50,000/- towards compensation for permanent disability. The Tribunal, after considering the evidence, awarded an amount of Rs.10,000/- under that count. Though the petitioner had claimed Rs.25,000/- towards compensation for loss of amenities, Tribunal awarded a sum of Rs.5,000/- under that head. Considering the fact that the owner and driver have not**

challenged the quantum of compensation awarded, I do not find any reason to interfere with the quantum of compensation awarded. The compensation awarded by the Tribunal is adequate and I do not find any reason to enhance the compensation.

8. Shri Rajan P.Kaliyath, learned counsel appearing for the Insurer has strenuously argued before me that the Insurer has no liability to indemnify the insured in this case. He relied on a decision reported in **National Insurance Co. Ltd. v. Swaran Singh** (2004 (1) KLT 781 (SC) in support of his case. Counsel for the petitioner also relied on the same decision.

9. Material on record shows that the second respondent, driver of the Autorikshaw was a holder of a learner's licence alone. He was not having a regular licence. In paragraph 86 of the judgment in **Swaran Singh's case** (supra) the Apex Court held that a learner's is licence is also a licence within the meaning of the provisions of the Motor Vehicles Act. It was further held that if a holder of a learner's licence drives a vehicle subject to the conditions mentioned in the licence, it cannot be said that he has no

licence. In this case learner's licence was issued not for driving a public vehicle. Autorikshaw is a public service vehicle and for driving the same the driver not only needs a regular licence but he should possess a badge also. So it cannot be said that the Autorikshaw driven by the second respondent was subject to the conditions mentioned in the licence issued to him. So the contention of the Insurer that it is not liable to indemnify the insured is correct. But in view of the principles laid down in **National Insurance Co. Ltd. v. Laxmi Narain Dhut** (2007 (2) KLT 470), the Insurer has to indemnify the insured and if so advised, recover the same from the insured.

In the result, M.F.A. No.815 of 1999 is dismissed. M.F.A. No.291 of 2000 is allowed in part. It is held that the Insurer shall deposit the amount awarded by the Tribunal and recover the same from the insured.

**K. PADMANABHAN NAIR, JUDGE.**

vsv

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO.815 OF 1999**
**AND**
**M.F.A. NO. 291 OF 2000**

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**J U D G M E N T**

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**4TH JUNE, 2007**